

K-C Docket No.: 17858.3  
Serial No.: 10/749,988  
Reply to Office Action of July 27, 2006

### Remarks

Claims 1-26 are pending in the instant application. Claims 6, 7, and 15 have been withdrawn. Claims 1-5, 8-14, and 16-26 form the subject matter of this response. Independent claim 11 has been amended to clarify the invention; support for the amendment can be found at page 20, line 26 to page 21, line 2. Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

By way of the Office Action mailed July 27, 2006, the Examiner requested that the Applicant clarify the relationship between claims 2-4, 20, and 22-24 and Group II that was elected. Claim 5 is rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1-5, 11-14, and 20-24 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated, and thus unpatentable, over Tubo et al. (US 5,040,677) (hereinafter "Tubo"). Claims 11-14 and 16 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by, and thus unpatentable over, Narawa et al. (JP 10-95481) (hereinafter "Narawa"). Claims 8, 10, 16, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tubo in view of Narawa. Claims 9, 17, and 18 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tubo in view of Franks-Farah et al. (US 6,640,976) (hereinafter "Franks-Farah"). Claim 19 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tubo in view of Franks-Farah and further in view of The Official Notice. These rejections are respectfully **traversed** to the extent that they may apply to the presently presented claims.

### Clarification of Election

By way of section 1 of the Office Action mailed July 27, 2006, the Examiner requested that the Applicant clarify the relationship between claims 2-4, 20, and 22-24 and Group II that was elected. Claims 2-4, 20, and 22-24 are each directed, *inter alia*, to related, similar, or paired structures having different rigidities. Support for these claims can be found at page 21, line 28 to page 22, line 11. This portion of the specification describes why and how different materials used in the packages described in the instant application can and do have different rigidities. This description applies to all of the packages of the instant application, including those included in Group II.

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### **Rejections Under 35 U.S.C. § 112**

#### **Claim 5 is not indefinite.**

By way of the Office Action mailed July 27, 2006, the Examiner rejects claim 5 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to point out and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully **traversed**.

Claim 5 has been amended to correct an error in word choice. For at least this reason, Applicant respectfully requests that all the rejections under 35 U.S.C. § 112 be withdrawn.

### **Rejections Under 35 U.S.C. § 102**

#### **Tubo does not disclose each and every element of the claimed invention.**

By way of the Office Action mailed July 27, 2006, the Examiner rejects claims 1-5, 11-14, and 20-24 under 35 U.S.C. § 102(b) as allegedly being anticipated, and thus unpatentable, over Tubo. This rejection is respectfully **traversed**.

When asserting a Section 102 rejection, it is well established that there is no anticipation unless (1) all the same elements are (2) found in exactly the same situation and (3) are united in the same way to (4) perform the identical function. Independent claims 1, 11, and 21 (and thus also their dependent claims) each include at least one element not found in Tubo (or the other art of record), namely, a package enclosing a single disposable absorbent article of the subject invention. What the Examiner describes as "a single disposable absorbent article (30)" in Tubo is actually a "skin wound dressing" made up of a cultured human epithelial cell sheet stapled to petroleum jelly-impregnated gauze. The wound dressing of Tubo is not the disposable absorbent article of the claimed invention, as further defined in the instant application. With at least this element lacking from the teaching of Tubo, the presented claims cannot be anticipated by Tubo. Therefore, the rejection of independent claims 1, 11, and 21 (as well as their respective dependent claims) is respectfully requested to be withdrawn.

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Narawa does not disclose each and every element of the claimed invention.

By way of the Office Action mailed July 27, 2006, the Examiner rejects claims 11-14 and 16 under 35 U.S.C. § 102(b) as allegedly being anticipated by and thus unpatentable over Narawa. This rejection is respectfully **traversed**.

Independent claim 11 as amended (and thus also its dependent claims) includes at least one element not found in Narawa (or the other art of record), namely, a package enclosing a single disposable absorbent article of the subject invention wherein the absorbent article has a ratio of the folded configuration to the unfolded configuration of less than 0.14. Narawa does not include a disposable absorbent article folded with such a ratio, and, in fact, teaches away from the claimed invention. Kao is unequivocal with respect to a ratio of 0.15 being the lower limit of workable ratios. "If the thickness ratio becomes less than 15% [0.15 as relates to the present application] the diaper becomes hard and the texture worsens." There is no suggestion in Kao that there is no limit to the smaller-ratio-is-better concept. Kao, in fact, places a distinct limit on that concept and teaches that anything below 0.15 produces undesirable results. With at least this element lacking from the teaching of Narawa, the presented claims cannot be anticipated by Narawa. Therefore, the rejection of independent claim 11 (as well as its dependent claims) is respectfully requested to be withdrawn.

Rejections Under 35 U.S.C. § 103

Tubo in view of Narawa does not make obvious the claimed invention.

Claims 8, 10, 16, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tubo in view of Narawa. This rejection is respectfully **traversed**.

To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

First, there is no motivation or suggestion in Tubo for one of skill in the art to modify the Tubo disclosure to achieve the claimed invention, and the Examiner has not described any practical motivation or suggestion outside of Tubo, such as in general knowledge, to do so. The Examiner states without evidence that vacuum packing Tubo's wound dressing would better protect the wound dressing and would provide for a smaller package such that vacuum packing is desirable. Skin cells

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and the saline or culture medium in which they are stored do not do well in the lack of oxygen and pressure inherent to a vacuum (e.g. liquids can boil at room temperature in a vacuum). Vacuum packing of such is completely undesirable, thus eliminating any motivation or suggestion to do so.

Second, the Examiner has not described in any manner how or even if there might be a reasonable expectation of success in modifying Tubo, where in fact there appears to be more of a reasonable expectation of disaster.

In the alternative, claims 8, 10, 16, 25, and 26 all depend from allowable independent claims as described above and are thus allowable themselves.

Therefore, for at least these reasons, the rejection of claims 8, 10, 16, 25, and 26 is respectfully requested to be withdrawn.

Tubo in view of Franks-Farah do not make obvious the claimed invention.

Claims 9, 17, and 18 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tubo in view of Franks-Farah. This rejection is respectfully traversed.

Neither Tubo nor Franks-Farah alone or together teach or suggest all the claim limitations of claims 9, 17, or 18 as required by MPEP §2143. Franks-Farah teaches only including color-coding in step-by-step instructions to assist a user in identifying corresponding components of a kit. Tubo teaches even less. Instructions are quite different from an opening element. No reference or combination of references discloses, teaches, or suggests an opening element coded to indicate the size or type of an absorbent article.

In the alternative, claims 9, 17, and 18 all depend from allowable independent claims as described above and are thus allowable themselves.

Therefore, for at least these reasons, the rejection of claims 9, 17, and 18 is respectfully requested to be withdrawn.

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Tubo in view of Franks-Farah and The Official Notice do not make obvious the claimed invention.

Claim 19 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tubo in view of Franks-Farah and further in view of The Official Notice

Neither Tubo nor Franks-Farah nor The Official Notice alone or together teach or suggest all the claim limitations of claim 19 as required by MPEP §2143. Franks-Farah teaches only including color-coding in step-by-step instructions to assist a user in identifying corresponding components of a kit. Tubo teaches even less, and The Official Notice does not correct these deficiencies. Instructions are quite different from an opening element. No reference or combination of references discloses, teaches, or suggests an opening element coded to indicate the size or type of an absorbent article.

In the alternative, claims 19 depends from an allowable independent claim as described above and is thus allowable itself.

Therefore, for at least these reasons, the rejection of claim 19 is respectfully requested to be withdrawn.

#### **Conclusion**

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-8863.

Respectfully submitted,

DUANE L. MCDONALD

By: 

Randall W. Fieldhack  
Registration No.: 43,611  
Attorney for Applicant

#### **CERTIFICATE OF TRANSMISSION**

I, Mary L. Marchant, hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300 on September 7, 2006.

  
Mary L. Marchant